

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RENARD T. POLK,

Plaintiff,

v.

ROBERT LEGRAND, et al.,

Defendants.

Case No. 3:14-cv-00073-MMD-VPC

ORDER

This removed action was initiated by Plaintiff who is a prisoner in the custody of the Nevada Department of Corrections. Before the Court are two Reports and Recommendations of United States Magistrate Judge Valerie P. Cooke (dkt. nos. 44 & 50) relating to Plaintiff's Motion for Preliminary and Permanent Injunction (dkt. no.27) and Defendants' Motion for Summary Judgment (dkt. no. 34). The Magistrate Judge recommended that Plaintiff's Motion for Preliminary and Permanent Injunction ("Plaintiff's PI Motion") be denied. (Dkt. no. 44.) Plaintiff has filed an objection (dkt. no. 47) and Defendants have replied (dkt. no. 52). The Magistrate Judge subsequently recommended granting Defendants' Motion for Summary Judgment ("Defendants' Motion"). (Dkt. no. 50.) Plaintiff had until May 30, 2015, to object (*id.*), but has failed to do so.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and

1 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party
2 fails to object, however, the court is not required to conduct “any review at all . . . of any
3 issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
4 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
5 magistrate judge’s report and recommendation where no objections have been filed.
6 *See United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the
7 standard of review employed by the district court when reviewing a report and
8 recommendation to which no objections were made); *see also Schmidt v. Johnstone*,
9 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in
10 *Reyna-Tapia* as adopting the view that district courts are not required to review “any
11 issue that is not the subject of an objection.”).

12 Plaintiff objects to the Magistrate Judge’s recommendation to deny Plaintiff’s PI
13 Motion, but not the recommendation to grant Defendants’ Motion. Because the Court
14 adopts the Magistrate Judge’s recommendation to grant Defendant’s Motion, the Court
15 need not address the recommendation to deny Plaintiff’s PI Motion. Moreover, the Court
16 finds it appropriate to conduct a *de novo* review of the Magistrate Judge’s
17 recommendation to grant summary judgment despite the absence of an objection by
18 Plaintiff.

19 Plaintiff sues Defendants based on their alleged confiscation of certain personal
20 property and improper deductions from Plaintiff’s gift coupon while he was incarcerated
21 at the Lovelock Correctional Center. After screening pursuant to 28 U.S.C. § 1915A,
22 the Court permitted four claims for an authorized, deprivation of property in violation of
23 the Fourteenth Amendment’s Due Process Clause to proceed.¹ (Dkt. nos. 5, 9.) In
24 particular, Plaintiff was permitted to pursue Count I against Defendant Property Officer
25 David Keener, Count III against Property Supervisor Terry Lindberg, Count V against
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28 ¹The Court dismissed Counts VI and VII with leave to amend, but Plaintiff did not
elect to amend. (Dkt. no. 9.)

1 Defendants R. Waldo and Dwayne Deal, and Count VIII against Defendants Albert
2 Peralta and Pauline Simmons. (*Id.*)

3 The Magistrate Judge found that part of Plaintiff's claim in Count I, based on
4 Defendant Keener's alleged conduct in February 2008 and in Count VII, based on
5 Defendants Peralta and Simmons' alleged conduct in June 2009 and April 2010, are
6 outside of the applicable three year statute of limitations period.² (Dkt. no. 50 at 5-6.)

7 The Magistrate Judge recommended that claims based on these alleged events be
8 dismissed. The Magistrate Judge found that Plaintiff failed to exhaust Counts I, III and
9 V and recommended dismissal. (*Id.* at 7-9.) As to the allegations against Defendant
10 Simmons in Count VIII, the Magistrate Judge found that Plaintiff undisputedly failed to
11 present any evidence that Simmons was involved in making any deductions. (*Id.* at 9.)

12 The Magistrate Judge then recommended granting summary judgment in favor of
13 Defendant Peralto because the two remaining alleged deductions in Count VIII were
14 undisputedly made for Plaintiff's legal supplies as authorized under state law. (*d.* at 9-
15 12.) Having reviewed the Complaint and the briefs relating to Defendants' Motion for
16 Summary Judgment, the Court agrees with the Magistrate Judge's findings and
17 recommendations.


18 It is therefore ordered, adjudged and decreed that the Report and
19 Recommendation of Magistrate Judge Valerie P. Cooke (dkt. no. 50) is accepted and
20 adopted in its entirety. Defendants' Motion for Summary Judgment (dkt. no. 34) is
21 granted. The other pending motions (dkt. nos. 27, 54, 55 and 65) are denied as moot.
22 The Magistrate Judge's Report and Recommending relating to Plaintiff's Motion for
23 Preliminary and Permanent Injunction (dkt. no. 44) is denied as moot.

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25 ²In recounting Plaintiff's allegations with respect to Count I, the Magistrate
26 Judge's Report and Recommendation incorrectly identified the second alleged occasion
27 when Defendant Keener confiscated Plaintiff's property as occurring on November 8,
28 2010 (dkt. no. 50 at 2), instead of November 8, 2013, as alleged in the Complaint (dkt.
no. 1-1 at 6). This typographical error was harmless and did not compel a
recommendation to dismiss the part of Count I that is based upon the November 8,
2013 incident.

1 The Clerk is instructed to enter judgment in favor of Defendants in accordance
2 with this Order and close this case.

3 DATED THIS 2nd day of September 2015.

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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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